

ON 6/24/09

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * *

IN RE:

Case No.: BK-N-09-51953-GWZ; Chapter 11
Jointly Administered with:

SILVER CLUB, a Nevada corporation

09-51956 Parker's Model T, Inc.
09-51958 The Holder Group El Capitan, Inc.
09-51961 The Holder Group Elko, LLC

☐ Affects this Debtor.
☒ Affects all Debtors.
☐ Affects Parker's Model T, Inc.
☐ Affects The Holder Group El Capitan, Inc.
☐ Affects The Holder Group Elko, LLC

Hrg. DATE: June 25, 2009
Hrg. TIME: 3:00 p.m.
Est. Time: 1 hour
Set By: Judge Zive

Debtors.

**EMERGENCY MOTION FOR INTERIM APPROVAL OF USE OF CASH
COLLATERAL BY DEBTORS AND GRANTING ADEQUATE PROTECTION
AND SCHEDULING A FINAL HEARING TO APPROVE USE OF CASH
COLLATERAL BY DEBTORS**

SILVER CLUB, a Nevada corporation; PARKER'S MODEL T, INC., a Nevada corporation; THE HOLDER GROUP EL CAPITAN, INC., a Nevada corporation; and THE HOLDER GROUP ELKO, LLC, a Nevada limited liability company (collectively, the "Debtor Entities"), by and through their proposed counsel, the law firm of BELDING, HARRIS & PETRONI, LTD., hereby submit their EMERGENCY MOTION FOR INTERIM APPROVAL OF USE OF CASH COLLATERAL BY DEBTORS AND GRANTING ADEQUATE

1 PROTECTION AND SCHEDULING A FINAL HEARING TO APPROVE USE OF CASH
2 COLLATERAL BY DEBTORS (The "Motion").

3 This Motion is made and based on the points and authorities below, the OMNIBUS
4 DECLARATION OF CHRIS COLEY IN SUPPORT OF FIRST DAYMOTIONS (the "Coley
5 Declaration"), the papers and pleadings on file herein, judicial notice of which is respectfully
6 requested, and any arguments of counsel entertained at any interim or final hearings on this
7 matter.
8

9 **I.**

10 **CONCISE STATEMENT OF RELIEF REQUESTED**

11 This concise statement of relief requested is made pursuant to Bankruptcy Rule
12 4001(b)(1)(B). This Motion seeks entry of a proposed ORDER GRANTING EMERGENCY
13 MOTION FOR INTERIM APPROVAL OF USE OF CASH COLLATERAL BY DEBTORS
14 AND GRANTING ADEQUATE PROTECTION AND SCHEDULING A FINAL HEARING
15 TO APPROVE USE OF CASH COLLATERAL BY DEBTORS (the "Emergency Order"),
16 thereby approving an emergency interim basis for the Debtors' Cash Collateral Use, pursuant to
17 Bankruptcy Rule 4001(b) and LR 4001(b). This Motion further requests that the Court schedule
18 a final hearing for the approval of the Debtors' Cash Collateral Use at least twenty (20) days
19 hereafter.
20

21 Northern Nevada Asset Holdings, LLC, a limited liability company (the "Lender"),
22 claims a security interest in all or substantially all of Debtors' real and personal property pursuant
23 to that certain Credit Agreement, originally entered into on July 31, 2007, with the Debtors and
24 First National Bank of Nevada ("Bank"), pursuant to which the Debtors procured a loan in the
25 principal amount of \$33,000,000.00 (the "Loan"), under the Credit Agreement, the proceeds
26 from the Loan were to be utilized to conduct the Debtors' business operations pertaining to the
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28

1 casino business of the Debtors. The Loan is evidenced by a revolving credit note (the "Note"),
2 dated July 31, 2007, executed by the Debtors jointly and severally in favor of the Bank. The
3 Loan was secured, in part, by certain deeds of trust granted over the casinos, which included
4 Security Agreements at the time that are rents and fixture filings, to the Bank as Beneficiary.
5 Upon information and belief, no other creditor has a secured claim to or a lien in the Cash
6 Collateral, except as otherwise set forth in the Motion. Bank was ultimately taken over by the
7 FDIC, and the FDIC sold the Note to Northern Nevada Asset Holdings, LLC.
8

9 The Debtors cannot meet their ongoing postpetition obligations unless they have the
10 immediate ability to use Cash on Hand, the Deposit Accounts and Post-Petition Cash. In the
11 absence of such use, immediate and irreparable harm will result to the Debtors, their Estates and
12 their creditors, and will render an effective and orderly reorganization of the Debtors' businesses
13 impossible. Debtors intend to use the cash collateral for Ordinary Operating Disbursements and
14 in accordance with the Cash Forecast attached to the Motion as Exhibit "A" and incorporated
15 herein by that reference.
16

17 1. The Cash Collateral Budget or Cash Forecast Budget for each of the four (4)
18 Debtor Entities allows for the Debtors' use of Cash Collateral in accordance with the Cash
19 Forecasts attached hereto, while preserving the Debtors' and the Lender's claims regarding the
20 Cash Collateral. The proposed interim cash collateral use allows the Debtors to effectively
21 operate and maintain their businesses during the Chapter 11 cases and is essential to an effective
22 reorganization.
23

24 2. As part of the Cash Forecasts and use of cash collateral in accordance with these
25 Cash Forecasts, Debtors will provide certain acknowledgments and agreements concerning the
26 Lender's security interests in and liens on the Collateral, subject to an exception on Cash on
27 Hand, Deposit Accounts and Post-Petition Cash.
28

3. As and for adequate protection of the Lender's security interests in the Prepetition Collateral, the Debtors propose the following restrictions for their interim Cash Collateral use: (i) the Lender is granted Replacement Liens on all Collateral, and, except for Chapter 5 causes of action, on all Post-Petition Collateral to the extent of a diminution in value of its Prepetition Collateral; (ii) Debtors shall make adequate protection payments to the Lender on behalf of the Lender in an amount equal to the Debtors' Cash and Cash Equivalents (as reflected on the Debtors' balance sheet) in excess of \$500,000.00 for each of the Debtor Entities, to be measured as of the last day of each fiscal quarter and to be paid on the 30th day thereafter, and subject to other limitations.

4. Entry of the Emergency Order would only grant Debtors' such authority until a final hearing can take place pursuant to Bankruptcy Rule 6003, whereas the final hearing would grant such authority under the terms of the proposed cash collateral use. Debtors seek to use all Cash Collateral as provided for in Section 363 of the Bankruptcy Code.

II.

INTRODUCTION

1. On June 19, 2009 (the "Petition Date"), Debtors filed their voluntary petitions under Chapter 11 of the Bankruptcy Code.

2. Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner, and no official committees have yet been established in these cases.

1 III.

2 **JURISDICTION AND VENUE**

3 4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
4 1134. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (D) and (M).

5 5. The basis for the relief sought herein are Sections 361 and 363 of the Bankruptcy
6 Code, Bankruptcy Rules 4001(b) and 6003, and LR 4001(b).

7 6. Venue of Debtors' Chapter 11 cases in this District is proper pursuant to 28
8 U.S.C. §§ 1408 and 1409.

9 IV.

10 **BACKGROUND**

11 7. The Debtors collectively form a diversified gaming company that focuses on four
12 (4) locations in Northern Nevada, including casino operations, both gaming and slot machines.
13 The Debtors' casino gaming operations consist of five (5) casinos (and hotel/casinos) located in
14 Northern Nevada, specifically Elko, Hawthorne, Sparks and Winnemucca.

15 **A. Casino Gaming.**

16 8. The Debtors collectively form a diversified gaming company that focuses on
17 casino operations. Debtor THE HOLDER GROUP ELKO, LLC, operates the following: the
18 Commercial Casino, with 185 slot machines and no table games; The Stockmen's, with 187 slot
19 machines, 9 table games and 141 hotel rooms; The Scoreboard, with 107 slot machines and no
20 table games, in Elko, Nevada; Debtor THE HOLDER GROUP EL CAPITAN, INC., operates
21 244 slot machines, 5 table games and 100 hotel rooms in Hawthorne, Nevada; Debtor
22 PARKER'S MODEL T, INC., operates 235 slot machines, 4 table games and 84 hotel rooms, in
23 Winnemucca, Nevada; and Debtor SILVER CLUB, was operating 380 slot machines, 9 table
24 games and 204 hotel rooms, but has temporarily been closed, located in Sparks, Nevada.

V.

RELIEF REQUESTED

9. Debtors have an emergency need for use of the Cash Collateral in accordance with the Cash Forecast Budgets attached hereto as Exhibit "A", and request Court authorization on an emergency interim basis for such use in order to avert an immediate closure of its businesses, which require use of all such Cash Collateral for operations. The Budget was formulated after review of Debtors' normal and ordinary course cash needs in the operation of its businesses. Exhibit "A" also includes the CMS International payroll detail, given the fact that the Cash Forecast Budgets disclose significant monies being paid to CMS International, which entity serves the management function for all the properties, including gaming oversight and reporting, human resources, financial reporting and insurance procurement and collections. The Exhibit "A" detail also includes a breakdown for the budgeted CMS International invoices for each of the properties.

10. As of the Petition Date, the Debtors are informed and believe that the enterprise value of the Debtors' businesses as a going concern is more than the total amount owed under the Lender's Note. The Debtors believe that the enterprise value of the Debtors' businesses will not diminish provided the Debtors' businesses continuing to operate in the ordinary course and expenditure of capital expenditures as proposed in the Budget, all gaming licenses and permits remaining in place, and present management remaining in place.

11. Included in the Cash Forecast Budget for the Silver Club, located in Sparks, Nevada, is the cost to reopen the Silver Club, for less than one day, in order to preserve the gaming license for that location. The notification letters to the Nevada State Gaming Control Board and the breakdown for the license costs are attached hereto as Exhibit "B" and incorporated herein by that reference.

VI.

LEGAL ARGUMENT

12. Section 363(c) of the Bankruptcy Code provides that “[t]he trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless – (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2).

13. The term “cash collateral” is defined in Section 363(a) of the Bankruptcy Code as including the following:

[C]ash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use of occupancy of rooms and other public facilities in hotels, motels or other lodging properties subject to a security interest as provided in section 552 (b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a).

14. If, pursuant to Section 363(c)(2)(A) of the Bankruptcy Code, an entity with an interest in cash collateral consents to that collateral’s use, sale or lease, a debtor-in-possession may still be required to provide adequate protection to an entity with an interest in the cash collateral. Section 363(e) of the Bankruptcy Code provides, in pertinent part, as follows:

(e) Notwithstanding any other provision of this section, at any time, on any request of an entity that has an interest in property used, sold or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use sale, or lease as is necessary to provide adequate protection of such interest....

11 U.S.C. § 363(e).

15. As applied to the cases at hand, the Lender, is the only party with a properly

1 perfected security interest in Cash Collateral. Moreover, Debtors' immediate use of Cash
2 Collateral is essentially to its ongoing operations and ability to reorganize. Most importantly, the
3 proposed interim cash collateral use preserves the Debtors' and the Lender's claims regarding the
4 Cash Collateral while allowing for its use to the benefit of all parties in interest.
5

6 16. As such, the Court can and should grant Debtors the authority and approval to
7 use Cash Collateral, first on an interim and emergency basis, and after further notice and hearing,
8 on a final basis.
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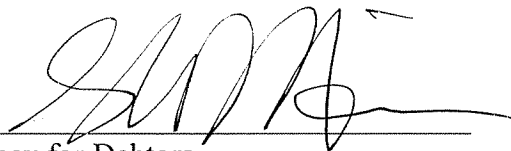
10 **VII.**

11 **CONCLUSION**

12 WHEREFORE, Debtors respectfully request that Court enter an order granting
13 emergency interim approval of the Debtors' proposed interim use of cash collateral pursuant to
14 Bankruptcy Rule 4001(b), and scheduling a final hearing for approval of the cash collateral use at
15 least twenty (20) days hereafter. Debtors also request such other relief as is just and proper.
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17

18 DATED this 24th day of June, 2009.
19

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26 _____
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